



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

August 2, 1954

Hon. Sam Lee
Criminal District Attorney
Brazoria County
Angleton, Texas

Letter Opinion No. MS-145

Re: Certain questions regarding
use of shrimp trawls in the
inland salt waters of West
Bay and Chocolate Bay.

Dear Mr. Lee:

Your request for an opinion reads in part as follows:

"(1) Are West Bay and Chocolate Bay, which are inland salt waters of this State subject to the ebb and flow of the tide from the Gulf of Mexico, open at any time of the year to the use of a 65 ft. shrimp trawl?

"(2) Are the said Bays open to a shrimp trawl not in excess of 10 ft. at the mouth the year around?

"(3) Is the mere possession of a shrimp trawl in excess of 10 ft. at the mouth, as measured along the webbing attached to the cork line, in the said Bays or the inland salt waters of this State a violation of the law even though the same is not being used, and is your ruling affected by an open and closed season? If there is an open and closed season, what are the same?

"(4) With reference to the use of a 10 ft. trawl, can the same be used in the inland salt bays at any hour of the day or night?"

In answering your first question attention is called to Sections 1 and 1a of Article 941, Vernon's Penal Code, as amended by Chapter 119, Acts 1929, 41st Leg., p. 269. Section 1 makes it unlawful for any person to place, set, use or drag any seine, net, or other device for catching fish or shrimp,

other than the ordinary pole and line, casting rod and reel, artificial bait, trotline, or cast net or minnow seine of more than 20 feet in length for catching bait, or have in his possession any seine, net, or trawl without a permit in or on any of the waters of any of the bays, streams, bayous, or canals, of Orange, Jefferson, Harris, Brazoria, Chambers, and Galveston Counties, or in the tidal waters of many other specifically named or defined bodies of water. (Emphasis added throughout).

Section 1a reads:

"Provided that it shall be unlawful for any person to drag any seine, or use any drag seine, or shrimp trawl for catching fish or shrimp, or to take or catch fish or shrimp with any device other than with the ordinary pole and line, casting rod, rod and reel, artificial bait, trot line, set line, or cast net, or minnow seine of not more than twenty feet in length for catching bait, or to use a set net, trammel net or strike net, the meshes of which shall not be less than one and one-half inches from knot to knot, in any of the tidal bays, streams, bayous, lakes, lagoons, or inlets or parts of such tidal waters of this State not mentioned in Section 1 hereof."

Therefore, by the provisions of Article 941, as amended in 1929, the use of certain types of nets was prohibited for the taking of shrimp or fish in the bays of Brazoria and Galveston Counties at any time.

Article 952L-11, Vernon's Penal Code, which is related to the subject under discussion, was first enacted in 1941 (Acts 47th Leg., ch. 322, p. 525), and amended by Acts 1947, 50th Leg., ch. 149, p. 87, and Acts 1949, 51st Leg., ch. 160, p. 330. Section 1 of this article reads in part:

"It shall be unlawful to catch or have in possession any shrimp from the inland salt waters of this State during the period of time from and between the 15th day of July and the 31st day of August and during the period of time from and between the 15th day of December and the 1st day of March of any year. ..."

Section 1b and Section 2 expressly provide that "all laws or parts of laws in conflict herewith are hereby repealed insofar as they conflict herewith."

There is a conflict between these two statutes in regard to the taking of shrimp from West Bay and Chocolate Bay, which are inland salt waters of this State, the effect of which is that Article 952L-11 modifies or repeals that part of Article 941 which made unlawful the use of certain nets or trawls for taking of shrimp in these waters. Therefore, in answer to your first question, it is the opinion of this office that West Bay and Chocolate Bay are open, except during the periods of time set forth in Section 1 of Article 952L-11, to the use of a shrimp trawl not in excess of 65 feet for the taking or catching of shrimp, subject to the provisions of said article.

In answer to your second question, it is the opinion of this office that a bait trawl, not in excess of 10 feet at the mouth, and conforming to the regulations contained in Section 1, Article 952L-11, may be used in the said bays the year round.

Your third question is clearly answered by the express provisions of Section 1 of Article 952L-11, which reads in part as follows:

"It shall be unlawful to use, operate, or possess any shrimp trawl in or on any of the salt waters of this State except the Gulf of Mexico, or except to have such shrimp trawl aboard a duly licensed boat while in port, or while in any channel en route to or from open waters of the Gulf, during such inland closed season as provided above, except as hereinafter provided in this Act."

It is our opinion that it is unlawful to possess any shrimp trawl, other than a regulation size bait trawl, in or on any of the inland salt waters during the closed seasons provided in Section 1 of Article 952L-11, except aboard a duly licensed boat while in port, or while in any channel en route to or from open waters of the Gulf of Mexico.

Hon. Sam Lee, page 4 (MS-145)

In answer to your fourth question it is our opinion that bait trawls, within the contemplation of Article 952L-11, can be used in the inland salt water bays at any hour of the day or night.

Yours very truly,

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By
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